

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

(11)

Regn. No. OA 1404/87

Date of decision: 15.12.1988

Shri Narotam

Applicant

Vs.

Union of India

Respondents

PRESENT

Shri S.N. Bhardwaj, counsel for the applicant.

Shri P.P. Khurana, counsel for the respondents.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri Narotam against the wrongful order passed orally removing the applicant from service from the post of Mali and not to take the applicant in service in violation of the order of the Director of Horticulture dated 20th March, 1987.

2. The brief facts of the case, as stated in the application, are that the applicant was appointed as a Mali on Muster Roll basis in the C.P.W.D. and worked as such continuously from 1.1.1984 to 31.12.1985 without any break. A certificate issued by the Asstt. Director (Horticulture), Special Circle, CPWD, is at Annexure-A to the application. Thereafter the applicant, alongwith other candidates, was called to appear before the Interview Board for confirmation to the post of Mali and he was declared successful in the interview/selection test and placed at S1. No.84 vide Addl. Director of Horticulture, CPWD (Respondent No.6)'s order dated 20.3.87 (Annexure-B to the application). The order of the Asstt. Director (Horticulture) confirms that he has completed more than 240 days service in a year for two successive years which is a mandatory requirement for confirmation to the post of Mali. But the applicant was not allowed to work after 31.12.85 and is still out of employment. While all other Malis who were working on Muster Roll basis and whose names appeared in the order dated 20.3.1987 have been appointed

as Malis on regular basis, the applicant has not been appointed as such. He met Respondent No. 7 (Shri V.K. Walia, Assistant Engineer (Horticulture)), several times to seek employment in the CPWD even on Muster Roll basis, but he never heard him properly and no order has been issued by the respondents to appoint him as a Mali in the CPWD even on Muster roll basis. The applicant got a legal notice issued on 11.6.87 through his advocate to the DG (Works), CPWD, (Respondent No.2), but without any response. A copy of the notice is at Annexure-D to the application. The applicant states that the act of the respondents in not taking him into employment as Mali is wholly illegal, arbitrary, mala-fide, discriminatory, ineffective, unconstitutional and liable to be set aside on the grounds that grave miscarriage of justice has occurred to the applicant by removing him from the post of Mali and there is no justification on the part of the respondents for refusing to take him into employment as Mali, that the applicant has been discriminated against as while 83 other persons whose names appeared in the order of 20.3.1987 have been appointed as Malis on regular basis, the applicant has not been allowed to do so and violated Articles 16(1) and 14 of the Constitution by denying him an opportunity to seek employment and not treating him equally with others. The applicant has prayed that the application be allowed with costs and the respondents be directed to reinstate him in service and to appoint him as a Mali on regular basis, to terminate the services of respondents Nos. 8 and 9 because they have no right to remain in service when the applicant has not been appointed, and to give him the benefits of arrears of pay, allowances etc. with effect from the date from which other Malis have been given.

3. The respondents in their reply have stated that the application is time-barred as, according to the applicant himself, the cause of action arose on 1.1.1986 and he slept over the matter and allegedly sent first representation only on 11.6.1987 by way of advocate's notice. As this notice

was sent after the expiry of the statutory period, the present application is clearly barred by limitation. The applicant was working as Bullock man and not as a Mali and that he has not been continuously working as Bullockman on the Muster Roll. The respondents have admitted that daily wage workers are regularised after completion of 240 days or more worked in two consecutive years, but the applicant did not attend duty of his own after 1.1.1986 for reasons best known to him. They have denied that the applicant was not allowed to work after 31.12.1985 or he ever turned up for seeking any employment from respondent No.7 after 1.1.1986 or that the respondent No.7 refused employment to the applicant. They have also denied receipt of any notice from the applicant's counsel, either by the Addl. Director of Horticulture or the Dy. Director of Horticulture. The applicant has no locus standii for his claim as he has been absenting himself from duty since 1.1.1986 and the break in service for 15 months has nullified and forefeited his claim for service which stood terminated automatically. The respondents have prayed for dismissal of the application with costs.

4. I have gone through the pleadings and the arguments on behalf of the respondents. The facts are that the applicant has not been in service of the C.P.W.D. after 31.12.85 and has not come to court to get his grievance redressed until 1987. It is also a fact that the applicant was eligible for appointment under the respondents on the basis of the order dated 20.3.1987 (Annexure 'C' to the application) wherein the Addl. Director (Horticulture) had appointed the applicant as a Mali in the pay scale of Rs. 750-12-870-EB-14-940 on a regular basis on the basis of his past service on Muster Roll basis. The respondents deny that there have been representations by the applicant. On the other hand, it is stated by them that the applicant did not report for duty

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after 31.12.1985 and, therefore, has nullified this claim for service. Even if it is accepted that a lawyer's notice was given in 1987, that does not make the present application within limitations under Section 21 of the Administrative Tribunals Act, 1985. During the arguments, the applicant had stated that he was working as a bullockman and such persons were given a break of two months every year, but he was not taken back after two months. He should have made written representations, but there is no proof that such representations were made and, therefore, the present application is barred by limitation. In the circumstances, the application is rejected.

5. However, the respondents have not been able to produce the relevant files to show why the applicant was not appointed according to the orders issued in Annexure 'C' to the application. Nor is there any record to indicate that the applicant was marked absent by anyone. In the circumstances, the respondents are directed to consider the case of the applicant for fresh appointment as a Mali, if necessary, by relaxing the standards in view of the order dated 20.3.1987. This is, however, a matter left to the respondents to decide.

6. There will be no order as to costs.

B.C. Mathur
(B.C. Mathur) 15/12/88
Vice-Chairman